



Rep. Scott Drury

**Filed: 5/29/2013**

09800SB1006ham001

LRB098 05269 MRW 46654 a

1 AMENDMENT TO SENATE BILL 1006

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1006 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Juvenile Court Act of 1987 is amended by  
5 changing Section 5-401.5 as follows:

6 (705 ILCS 405/5-401.5)

7 Sec. 5-401.5. When statements by minor may be used.

8 (a) In this Section, "custodial interrogation" means any  
9 interrogation (i) during which a reasonable person in the  
10 subject's position would consider himself or herself to be in  
11 custody and (ii) during which a question is asked that is  
12 reasonably likely to elicit an incriminating response.

13 In this Section, "electronic recording" includes motion  
14 picture, audiotape, videotape, or digital recording.

15 In this Section, "place of detention" means a building or a  
16 police station that is a place of operation for a municipal

1 police department or county sheriff department or other law  
2 enforcement agency at which persons are or may be held in  
3 detention in connection with criminal charges against those  
4 persons or allegations that those persons are delinquent  
5 minors.

6 (b) An oral, written, or sign language statement of a minor  
7 who, at the time of the commission of the offense was under the  
8 age of 17 years, made as a result of a custodial interrogation  
9 conducted at a police station or other place of detention on or  
10 after the effective date of this amendatory Act of the 93rd  
11 General Assembly shall be presumed to be inadmissible as  
12 evidence against the minor in any criminal proceeding or  
13 juvenile court proceeding, for an act that if committed by an  
14 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
15 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the  
16 Criminal Code of 2012, or under clause (d)(1)(F) of Section  
17 11-501 of the Illinois Vehicle Code unless:

18 (1) an electronic recording is made of the custodial  
19 interrogation; and

20 (2) the recording is substantially accurate and not  
21 intentionally altered.

22 (b-5) Under the following circumstances, an oral, written,  
23 or sign language statement of a minor who, at the time of the  
24 commission of the offense was under the age of 17 years, made  
25 as a result of a custodial interrogation conducted at a police  
26 station or other place of detention shall be presumed to be

1 inadmissible as evidence against the minor, unless an  
2 electronic recording is made of the custodial interrogation and  
3 the recording is substantially accurate and not intentionally  
4 altered:

5 (1) in any criminal proceeding or juvenile court  
6 proceeding, for an act that if committed by an adult would  
7 be brought under Section 11-1.40 or 20-1.1 of the Criminal  
8 Code of 1961 or the Criminal Code of 2012, if the custodial  
9 interrogation was conducted on or after June 1, 2014;

10 (2) in any criminal proceeding or juvenile court  
11 proceeding, for an act that if committed by an adult would  
12 be brought under Section 10-2, 18-4, or 19-6 of the  
13 Criminal Code of 1961 or the Criminal Code of 2012, if the  
14 custodial interrogation was conducted on or after June 1,  
15 2015; and

16 (3) in any criminal proceeding or juvenile court  
17 proceeding, for an act that if committed by an adult would  
18 be brought under Section 11-1.30 or 18-2 or subsection (e)  
19 of Section 12-3.05 of the Criminal Code of 1961 or the  
20 Criminal Code of 2012, if the custodial interrogation was  
21 conducted on or after June 1, 2016.

22 (b-10) If, during the course of an electronically recorded  
23 custodial interrogation conducted under this Section of a minor  
24 who, at the time of the commission of the offense was under the  
25 age of 17 years, the minor makes a statement that creates a  
26 reasonable suspicion to believe the minor has committed an act

1 that if committed by an adult would be an offense other than an  
2 offense required to be recorded under subsection (b) or (b-5),  
3 the interrogators may, without the minor's consent, continue to  
4 record the interrogation as it relates to the other offense  
5 notwithstanding any provision of law to the contrary. Any oral,  
6 written, or sign language statement of a minor made as a result  
7 of an interrogation under this subsection shall be presumed to  
8 be inadmissible as evidence against the minor in any criminal  
9 proceeding or juvenile court proceeding, unless the recording  
10 is substantially accurate and not intentionally altered.

11 (c) Every electronic recording made ~~required~~ under this  
12 Section must be preserved until such time as the minor's  
13 adjudication for any offense relating to the statement is final  
14 and all direct and habeas corpus appeals are exhausted, or the  
15 prosecution of such offenses is barred by law.

16 (d) If the court finds, by a preponderance of the evidence,  
17 that the minor was subjected to a custodial interrogation in  
18 violation of this Section, then any statements made by the  
19 minor during or following that non-recorded custodial  
20 interrogation, even if otherwise in compliance with this  
21 Section, are presumed to be inadmissible in any criminal  
22 proceeding or juvenile court proceeding against the minor  
23 except for the purposes of impeachment.

24 (e) Nothing in this Section precludes the admission (i) of  
25 a statement made by the minor in open court in any criminal  
26 proceeding or juvenile court proceeding, before a grand jury,

1 or at a preliminary hearing, (ii) of a statement made during a  
2 custodial interrogation that was not recorded as required by  
3 this Section because electronic recording was not feasible,  
4 (iii) of a voluntary statement, whether or not the result of a  
5 custodial interrogation, that has a bearing on the credibility  
6 of the accused as a witness, (iv) of a spontaneous statement  
7 that is not made in response to a question, (v) of a statement  
8 made after questioning that is routinely asked during the  
9 processing of the arrest of the suspect, (vi) of a statement  
10 made during a custodial interrogation by a suspect who  
11 requests, prior to making the statement, to respond to the  
12 interrogator's questions only if an electronic recording is not  
13 made of the statement, provided that an electronic recording is  
14 made of the statement of agreeing to respond to the  
15 interrogator's question, only if a recording is not made of the  
16 statement, (vii) of a statement made during a custodial  
17 interrogation that is conducted out-of-state, (viii) of a  
18 statement given in violation of subsection (b) at a time when  
19 the interrogators are unaware that a death has in fact  
20 occurred, (ix) of a statement given in violation of subsection  
21 (b-5) at a time when the interrogators do not have reasonable  
22 suspicion to believe that the minor committed an act that if  
23 committed by an adult could constitute an offense required to  
24 be recorded under subsection (b-5), or (x) ~~or (ix)~~ of any other  
25 statement that may be admissible under law. The State shall  
26 bear the burden of proving, by a preponderance of the evidence,

1 that one of the exceptions described in this subsection (e) is  
2 applicable. Nothing in this Section precludes the admission of  
3 a statement, otherwise inadmissible under this Section, that is  
4 used only for impeachment and not as substantive evidence.

5 (f) The presumption of inadmissibility of a statement made  
6 by a suspect at a custodial interrogation at a police station  
7 or other place of detention may be overcome by a preponderance  
8 of the evidence that the statement was voluntarily given and is  
9 reliable, based on the totality of the circumstances.

10 (g) Any electronic recording of any statement made by a  
11 minor during a custodial interrogation that is compiled by any  
12 law enforcement agency as required by this Section for the  
13 purposes of fulfilling the requirements of this Section shall  
14 be confidential and exempt from public inspection and copying,  
15 as provided under Section 7 of the Freedom of Information Act,  
16 and the information shall not be transmitted to anyone except  
17 as needed to comply with this Section.

18 (h) A statement, admission, confession, or incriminating  
19 information made by or obtained from a minor related to the  
20 instant offense, as part of any behavioral health screening,  
21 assessment, evaluation, or treatment, whether or not  
22 court-ordered, shall not be admissible as evidence against the  
23 minor on the issue of guilt only in the instant juvenile court  
24 proceeding. The provisions of this subsection (h) are in  
25 addition to and do not override any existing statutory and  
26 constitutional prohibition on the admission into evidence in

1 delinquency proceedings of information obtained during  
2 screening, assessment, or treatment.

3 (Source: P.A. 96-1251, eff. 1-1-11; 97-1150, eff. 1-25-13.)

4 Section 10. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 103-2.1 as follows:

6 (725 ILCS 5/103-2.1)

7 Sec. 103-2.1. When statements by accused may be used.

8 (a) In this Section, "custodial interrogation" means any  
9 interrogation during which (i) a reasonable person in the  
10 subject's position would consider himself or herself to be in  
11 custody and (ii) during which a question is asked that is  
12 reasonably likely to elicit an incriminating response.

13 In this Section, "place of detention" means a building or a  
14 police station that is a place of operation for a municipal  
15 police department or county sheriff department or other law  
16 enforcement agency, not a courthouse, that is owned or operated  
17 by a law enforcement agency at which persons are or may be held  
18 in detention in connection with criminal charges against those  
19 persons.

20 In this Section, "electronic recording" includes motion  
21 picture, audiotape, or videotape, or digital recording.

22 (b) An oral, written, or sign language statement of an  
23 accused made as a result of a custodial interrogation conducted  
24 at a police station or other place of detention shall be

1 presumed to be inadmissible as evidence against the accused in  
2 any criminal proceeding brought under Section 9-1, 9-1.2, 9-2,  
3 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the  
4 Criminal Code of 2012 or under clause (d)(1)(F) of Section  
5 11-501 of the Illinois Vehicle Code unless:

6 (1) an electronic recording is made of the custodial  
7 interrogation; and

8 (2) the recording is substantially accurate and not  
9 intentionally altered.

10 (b-5) Under the following circumstances, an oral, written,  
11 or sign language statement of an accused made as a result of a  
12 custodial interrogation conducted at a police station or other  
13 place of detention shall be presumed to be inadmissible as  
14 evidence against the accused, unless an electronic recording is  
15 made of the custodial interrogation and the recording is  
16 substantially accurate and not intentionally altered:

17 (1) in any criminal proceeding brought under Section  
18 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the  
19 Criminal Code of 2012, if the custodial interrogation was  
20 conducted on or after June 1, 2014;

21 (2) in any criminal proceeding brought under Section  
22 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the  
23 Criminal Code of 2012, if the custodial interrogation was  
24 conducted on or after June 1, 2015; and

25 (3) in any criminal proceeding brought under Section  
26 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 of the

1       Criminal Code of 1961 or the Criminal Code of 2012, if the  
2       custodial interrogation was conducted on or after June 1,  
3       2016.

4       (b-10) If, during the course of an electronically recorded  
5       custodial interrogation conducted under this Section, the  
6       accused makes a statement that creates a reasonable suspicion  
7       to believe the accused has committed an offense other than an  
8       offense required to be recorded under subsection (b) or (b-5),  
9       the interrogators may, without the accused's consent, continue  
10      to record the interrogation as it relates to the other offense  
11      notwithstanding any provision of law to the contrary. Any oral,  
12      written, or sign language statement of an accused made as a  
13      result of an interrogation under this subsection shall be  
14      presumed to be inadmissible as evidence against the accused in  
15      any criminal proceeding, unless the recording is substantially  
16      accurate and not intentionally altered.

17       (c) Every electronic recording made ~~required~~ under this  
18       Section must be preserved until such time as the defendant's  
19       conviction for any offense relating to the statement is final  
20       and all direct and habeas corpus appeals are exhausted, or the  
21       prosecution of such offenses is barred by law.

22       (d) If the court finds, by a preponderance of the evidence,  
23       that the defendant was subjected to a custodial interrogation  
24       in violation of this Section, then any statements made by the  
25       defendant during or following that non-recorded custodial  
26       interrogation, even if otherwise in compliance with this

1 Section, are presumed to be inadmissible in any criminal  
2 proceeding against the defendant except for the purposes of  
3 impeachment.

4 (e) Nothing in this Section precludes the admission (i) of  
5 a statement made by the accused in open court at his or her  
6 trial, before a grand jury, or at a preliminary hearing, (ii)  
7 of a statement made during a custodial interrogation that was  
8 not recorded as required by this Section, because electronic  
9 recording was not feasible, (iii) of a voluntary statement,  
10 whether or not the result of a custodial interrogation, that  
11 has a bearing on the credibility of the accused as a witness,  
12 (iv) of a spontaneous statement that is not made in response to  
13 a question, (v) of a statement made after questioning that is  
14 routinely asked during the processing of the arrest of the  
15 suspect, (vi) of a statement made during a custodial  
16 interrogation by a suspect who requests, prior to making the  
17 statement, to respond to the interrogator's questions only if  
18 an electronic recording is not made of the statement, provided  
19 that an electronic recording is made of the statement of  
20 agreeing to respond to the interrogator's question, only if a  
21 recording is not made of the statement, (vii) of a statement  
22 made during a custodial interrogation that is conducted  
23 out-of-state, (viii) of a statement given in violation of  
24 subsection (b) at a time when the interrogators are unaware  
25 that a death has in fact occurred, (ix) of a statement given in  
26 violation of subsection (b-5) at a time when the interrogators

1 do not have reasonable suspicion that the accused committed an  
2 act that could constitute an offense required to be recorded  
3 under subsection (b-5), or (x) ~~or (ix)~~ of any other statement  
4 that may be admissible under law. The State shall bear the  
5 burden of proving, by a preponderance of the evidence, that one  
6 of the exceptions described in this subsection (e) is  
7 applicable. Nothing in this Section precludes the admission of  
8 a statement, otherwise inadmissible under this Section, that is  
9 used only for impeachment and not as substantive evidence.

10 (f) The presumption of inadmissibility of a statement made  
11 by a suspect at a custodial interrogation at a police station  
12 or other place of detention may be overcome by a preponderance  
13 of the evidence that the statement was voluntarily given and is  
14 reliable, based on the totality of the circumstances.

15 (g) Any electronic recording of any statement made by an  
16 accused during a custodial interrogation that is compiled by  
17 any law enforcement agency as required by this Section for the  
18 purposes of fulfilling the requirements of this Section shall  
19 be confidential and exempt from public inspection and copying,  
20 as provided under Section 7 of the Freedom of Information Act,  
21 and the information shall not be transmitted to anyone except  
22 as needed to comply with this Section.

23 (Source: P.A. 97-1150, eff. 1-25-13.)".